IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 498/2004.

Salman S/o Abdul Rasheed
R/o Qidwai Nagar, Haldwani
District Nainital, through his father
Abdul Rasheed ..... Appellant.

Vs

1- M/s Chaudhry Gas Agencies
R/o Guru Nanak, Market, Haldwani (Nainital),
Through Sunil Chaudhary.
2- The New India Assurance Co.
Divisional Office, Haldwani (Nainital)
Through Divisional Manager ...Respondents

Sri Z.U. Siddiqui, learned counsel for the appellant.
Sri R.B. Aggarwal, learned counsel for the Insurance Company.
Ms. Anita Joshi, Advocate for respondent No.1.

Coram: Hon'ble P.C. Verma,J.
Hon'ble B.C. Kandpal,J.

Dated: June 14, 2006.

The present appeal U/S 173 of Motor Vehicles Act, 1988, has been against the judgment and award dated 5-10-2004, passed by Addl. District Judge/ M.A.C.T. Nainital, in MACP No. 152/2003 Salman Vs. M/s Chaudhary Gas Agencies and another, whereby the claimant was awarded Rs. 2,20,000/- as compensation against the New India Assurance Company along with interest @ 7% per annum from the date of filing of petition till final payment, in case if the Insurance Company fails to deposit the entire amount of compensation within one month from the date of impugned award.

2- Brief facts giving rise to this appeal are that while on 15-8-2003 the injured Salman along with his brother was coming down from Pilikothi towards Haldwani, a three-wheeler No. U.P.-02-C-6716, which was being driven rashly and negligently by its driver, lost control and dashed the claimant Salman. The three-wheeler was packed with the gas cylinders

and a gas cylinder fell down on the head of Salman and injured him badly. His skull bone was wiped out and the brain came out. The injured was brought to Krishna Hospital Haldwani from where he was referred to higher center. Then the injured was taken to Dhanwantari Hospital, Bareilly by Ambulance. It was also alleged in the claim petition that the injured lost his memory and he is in a very critical condition due to the injuries sustained by him in the accident. His future has become dark. He was a brilliant student and has lost his studies and perhaps he will not be able to resume education in the near future. The claimant filed the claim petition demanding compensation of Rs. 1,50,000/- for medical treatment, Rs. 1,00,000/- for future expenses, Rs. 25000/- for nutritious diet, Rs. 50,000/- as for pain and suffering, Rs. 2,50,000/- for disability and Rs. 25,000/- as expenses of conveyance and rent charge of houses hired at Bareilly.

3- The O.P. M/s Chaudhary Gas Agencies filed written statement and has not disputed the accident but alleged that driver of three-wheeler No. U.P. 02C-6716 was not at fault but it was the act of the injured which was responsible for the accident. It was alleged that the Gas Agencies paid Rs. 20,000/- to the injured. On the date of accident the three-wheeler was insured with New India Assurance Company.

4- The New India Assurance Company also contested the claim petition by filing its W.S. and alleged that the claim petition is not maintainable against it as the claimant has not served him with the copies of documents required under the provisions of Motor Vehicles Act. It was also alleged that highly excessive compensation has been claimed.

5- The Tribunal on the basis of pleadings of parties framed relevant issues. Thereafter in support of the claim the claimant examined Faizal Samsi as P.W.1 and Abdul Rasheed as P.W.2. The claimant also filed medical bills and papers relating to this treatment. The Gas Agency, examined Anand Ram, the driver of offending three-wheeler as D.W.1 Insurance Company did not produce any evidence. Some documents relating to insurance, registration of offending vehicle, driving licence etc were also filed.

6- The Tribunal on assessment of evidence on record allowed the claim petition and awarded Rs. 2,40,000/- as compensation along with interest @ 7% per annum payable by New India Assurance Company.

7- Being dissatisfied the claimant has filed this appeal for enhancement of compensation.

8- We have heard the learned counsel for the parties and perused the record.

9- It has been submitted on behalf of the claimant/appellant that the Tribunal has not followed the correct principle of law in calculating the amount of compensation and has without properly assessing the evidence on record, awarded the compensation in a very meager side. It has further been submitted that the Tribunal has also not awarded the proper rate of interest. It has also been submitted that the Tribunal did not award proper amount under the other heads.

10- The record shows that the claimant/appellant has filed the bills pertaining to his medical treatment and all these

bills show that the claimant/injured has invested amount of Rs. 65,522/- under this head. The counsel for the appellant has argued that it was not possible for the claimant to file all the bills as the prescription for diagnoses as well as the reports were available on the record but their bills could not be obtained by the claimant, therefore, the same could not be filed.

11- Having considered the submission advanced by the learned counsel for the appellant as well as the documents available on record, we are of the view that it would be proper to award an amount of Rs. 80,000/- under the head of medical expenses incurred by the claimant in his medical treatment. Further, the injured was taken to the hospital at Bareilly therefore, an additional amount must have also been incurred by the claimant on his special care and attendance, hence, an amount of Rs. 20,000/- would be just and proper under this head. The claimant was taken to the hospital at Haldwani and thereafter he was shifted to Bareilly and after his treatment again he was shifted back from Bareilly, therefore, the claimant must have certainly incurred an amount of Rs. 5,000/- in shifting the claimant from one place to other. The claimant have also deposed in the evidence that there is a loss of one year in the study of the injured on account of the injures sustained by him in the accident. Therefore, an amount of Rs. 20,000/- would also be just and proper to award the injured for loss of his education.

12- We are therefore of the view that the Tribunal has rightly awarded the amount of Rs. 1,25,000/- for pecuniary damages. We do not find any infirmity in the judgment and award passed by the Tribunal as far as the pecuniary damages awarded in favour of the claimant by the Tribunal.

13- The claimant has not filed any certificate before the Tribunal indicating therein that the injured has in fact suffers from any permanent disability on account of the injuries sustained by him. However, keeping in view the medical treatment of the injured as well as the nature of injuries suffered by the claimant/injured, an amount of Rs. 50,000/- would be just and reasonable compensation to be awarded in favour of the claimant/injured for his physical and mental shock on account of the injuries sustained by him.

14- It has been stated by the claimant in the claim petition that the injured has lost expectancy of his life on account of the injuries suffer by him, therefore, the additional amount of Rs. 25,000/- would also be just and reasonable to be awarded to the claimant/injured under the aforesaid head. After sustaining the injuries, the claimant/injured must have felt inconvenience, hardship, discomfort, frustration as well as mental stress. Therefore, an amount of Rs. 25,000/- should also be paid to the claimant under the aforesaid head. Thus, for non-pecuniary damages an amount of Rs. 95,000/- as has been held by us under the aforesaid heads would be a reasonable compensation in the instant case.

15- After the proper calculation of both the pecuniary and non-pecuniary damages, the total amount of compensation to be awarded in faovur of the claimant/injured comes to Rs. 2,20,000/-.

16- The Tribunal has also awarded the aforesaid amount in favour of the claimant/injured as compensation in lieu of the injuries suffered by the claimant/injured in the accident which appears to be just, adequate & reasonable.

17- This amount of compensation is to be paid by the New India Assurance Company who is the insurer of the offending vehicle.

18- As far as the rate of interest indicated in the impugned judgment and award is concerned, the same does not require any interference by this Court.

19- Learned counsel for the appellant has invited our attention towards the case reported in ***1995 ACJ 366, R.D. Hattangadi Vs Pest Control (India) Pvt. Ltd.*** and has submitted that in view of the guidelines given by the Hon'ble Apex Court, the amount of compensation in the instant case would certainly come to higher side.

18- We have thoroughly scrutinized the judgment placed before us and we are of the view that the facts and circumstances in the judgment placed before us are entirely different. The appellant does not get any benefit of the judgment cited before us.

19- On the basis of the assessment of evidence, we come to the conclusion that the amount of compensation awarded by the Tribunal by way of impugned judgment and award dated 05.10.2004 is adequate and justified and does not require any interference by this Court.

20- Thus the appeal lacks merit and is liable to be dismissed. The appeal is dismissed accordingly. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

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